

EXHIBIT A

Excerpts from Deposition of: Kelly Kish, R.N.

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF TENNESSEE

DANIEL LOVELACE and
HELEN LOVELACE, Individually
and as Parents of BRETT
LOVELACE, Deceased,

Plaintiff,

v. Case Number 2:13-cv-02289

PEDIATRIC ANESTHESIOLOGISTS,
P.A., BABU RAO PAIDIPALLI, and
MARK P. CLEMONS,

Defendant.

VIDEOTAPE DEPOSITION

OF

KELLY KISH

May 15, 2014

JILL W. HODGES, RPR, LCR #380
P O BOX 381722
Germantown, Tennessee 38138-1722
(901) 335-7952

RIVERSIDE REPORTING

1 THE VIDEOGRAPHER: This is the
2 video deposition of Kelly Kish taken by
3 the defense in the matter of Lovelace
4 versus Pediatric Anesthesiologists, et
5 al, In The U.S. District Court For The
6 Western District of Tennessee, Docket
7 2:13-cv-02289.

8 This deposition is being held at
9 the offices of Lewis Thomason in
10 Memphis, Tennessee on May 15, 2014.
11 We're on the record at 1:34.

14 MS. MAGEE: Marcy Magee. I
15 represent Dr. Mark Clemons.

16 MR. GILMER: Brad Gilmer and Karen
17 Koplon for Dr. Paidipalli.

18 MR. LEDBETTER: Mark Ledbetter for
19 the Plaintiffs, the Lovelaces.

20 MR. TALLEY: Robert Talley for the
21 deponent, Kelly Kish.

1 This is Dr. Clemons deposition of
2 Nurse Kish. I'd like to make and
3 preserve two objections at this time;
4 first, Dr. Clemons did not comply with
5 the law in Tennessee and in this case on
6 two accounts, properly filing a
7 certificate of good faith within 30 days
8 of pleading fault of a third party, a
9 motion to strike is pending, which
10 addresses the matters to be inquired on
11 today with this witness as well as the
12 affirmative defense that finds fault
13 with this nurse for this event;
14 second, Dr. Clemons failed to timely
15 respond to Plaintiff's Request for
16 Admissions early in this case served in
17 July 2012, answering them in 2013, and
18 has, therefore, foreclosed his denial of
19 allegations of fault against him in this
20 federal court case under Rule 36 of the
21 Federal Rules of Civil Procedure. Under
22 the Federal Rules, a failure to respond
23 is an admission; no requirement exists
24 to require the party submitting the

1 requests to, upon default, as here, move
2 to have the factual matters admitted;
3 thus, a general objection is made to
4 this deposition and its contents,
5 including its use by Dr. Clemons while
6 reserving the right to ask questions,
7 pending any rulings by the Court, the
8 U.S. Magistrate Judge, on these points.
9 Further, all other objections are
10 reserved.

11 MS. MAGEE: On behalf of Dr.
12 Clemons we take exception with your two
13 objections and we'll address them at the
14 appropriate time.

15 MR. GILMER: Otherwise, do we agree
16 to the standard caption, all objections
17 reserved except as to the form?

18 MR. LEDBETTER: Yes.

19 MS. MAGEE: Yes. This is a
20 discovery deposition being taken
21 pursuant to applicable Federal Rules of
22 Civil Procedure.

23 I'd like to mark as Exhibit 1 the
24 subpoena that was issued and served upon